

DATE

W. Gray Stream
National Hurricane Museum and Science Center
1205 N. Lakeshore Dr.
Lake Charles, LA 70601

Re: Ethics Board Docket No. 2015-1332

Dear Mr. Stream:

The Louisiana Board of Ethics, at its February 19, 2016 meeting, considered your request for an advisory opinion regarding whether Gilbane Construction can respond to a Request for Proposals for the position of Construction Manager at Risk for the National Hurricane Museum and Science Center, Inc.'s (Center) project. You stated that Dan Gilbane, Vice President of Gilbane Construction, has been a member of the Center's Board of Directors for approximately two years. You also provided the following information for consideration in connection with your request:

The Center was organized under the laws of Louisiana as a not for profit, non-stock corporation on August 16, 2006. The Center's principal purpose is to develop a national hurricane museum and science center. The Center is governed by a Board of Directors, the members of which are appointed by various public and private entities. Finally, upon dissolution, the Center, after satisfying its obligations, shall distribute its assets for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

The Center is planning to use the "Construction Manager at Risk" method of delivery to design and build a \$57 million educational facility in Lake Charles, Louisiana. The Center has received \$28 million in capital outlay funding, as well as funding from local governmental entities, private foundations, corporations and individuals.

The Board concluded, and instructed me to inform you, that the National Hurricane Museum and Science Center, Inc., is not a governmental entity subject to the Code of Governmental Ethics. The Louisiana Supreme Court, in *PIAL v. Theriot*, 99-1152 (La. 2010), found that all of the following four factors, originally set forth in *State v. Smith*, 357 So.2d 505 (La. 1978), must be present in order to find that an entity is public: (1) whether the entity was created by the legislature; (2) whether its powers were specifically defined by the legislature; (3) whether the property of the entity belongs to the public;

and (4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit. The Center was not created by the legislature, its powers were not specifically defined by the legislature, and its property does not belong to the public. Therefore, the Center is not a governmental entity subject to the Code.

The Board further concluded, and instructed me to inform you, that Dan Gilbane, in his capacity as a member of the Board of Directors for the Center, is not a public employee subject to the Code of Governmental Ethics. La. R.S. 42:1102(18)(a) provides that "Public employee" means anyone, whether compensated or not, who is: (i) An administrative officer or official of a governmental entity who is not filling an elective office; (ii) Appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) Engaged in the performance of a governmental function; or (iv) Under the supervision or authority of an elected official or another employee of the governmental entity. Based on the facts set forth above, Mr. Gilbane, in his capacity as a member of the Board of Directors for the Center, is not a public employee subject to the Code.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

Vivian Haley Williams
For the Board